

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

<b>ERIC R. BAHE, Custodian, CGM Roth Conversion IRA,</b>  <b>Plaintiff,</b>  <b>v.</b>  <b>FRANKLIN/TEMPLETON DISTRIBUTORS, INC., and WILLIAM J. LIPPMAN,</b>  <b>Defendants, and</b>  <b>FRANKLIN BALANCE SHEET INVESTMENT FUND,</b>  <b>Nominal Defendant.</b>	<b>Civil Action No. 04-11195 (MLW)</b>
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**DECLARATION OF EDWARD F. HABER**

I, Edward F. Haber, hereby depose and say:

1. I am a member of the bar of this Court and counsel for the Plaintiff, Eric R. Bahe, Custodian, CGM Roth Conversion IRA, in this action. I submit this declaration, at the request of the Court, to explain why I did not attend the final pretrial conference previously scheduled in this action for May 31, 2006.
2. The May 31, 2006 final pretrial conference was scheduled pursuant to this Court's March 21, 2005 Scheduling Order (the "Scheduling Order"). The Scheduling Order also provided that a Scheduling Conference would be held with

the Court on May 9, 2006, which “must be attended by trial counsel with full settlement authority or with their client(s).”

3. On May 4, 2006, the parties filed a Stipulation of Dismissal (Docket no. 53). A copy of the Stipulation, along with a letter to the Court from me, dated May 4, 2006, regarding the Stipulation of Dismissal, was hand delivered to the Court on May 5, 2006. A copy of that letter and the Stipulation are attached hereto as Exhibit 1.
4. At the time that I filed the Stipulation and sent the Court my May 4, 2006 letter, it was my intention to appear before the Court at the above referenced May 9, 2006 Scheduling Conference, to address any questions the Court may have had regarding the Stipulation of Dismissal, if the Court had not acted on the Stipulation of Dismissal prior to May 9, 2006. I subsequently learned that no Scheduling Conference in this action was on the Court’s calendar for May 9, 2006.
5. On May 10, 2006, I received the ECF notice that this case had been Terminated. (See Exhibit 2 hereto). That was consistent with the Stipulation of Dismissal that had been filed by the parties. Accordingly, it was my understanding that the final pretrial conference which had been scheduled for May 31, 2006, by the March 21, 2005 Scheduling Order, was no longer on the Court’s calendar.
6. I did not attend the May 31, 2006 conference because I was under the misunderstanding that it was not being held, in light of the May 10, 2006 Termination of this action. I assure the Court that I take my responsibilities and

obligations to the Court very seriously and if I had understood that the conference was still scheduled on May 31, 2006, I would have appeared.

Signed and sworn to under the pains and penalties of perjury, this 12<sup>th</sup> day of June, 2006.

**/s/ Edward F. Haber**  
Edward F. Haber

**Certificate of Service**

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing ("NEF") and paper copies will be sent to those indicated as non-registered participants on the 12th day of June, 2006.

**/s/ Edward F. Haber**  
Edward F. Haber